

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

RH05049799

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FINAL STATEMENT OF REASONS

UPDATE OF INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

**UPDATE OF INITIAL STATEMENT OF REASONS: SPECIFIC PURPOSE AND
REASONABLE NECESSITY FOR REGULATION**

What follows is the specific purpose of each amended section which was revised from the originally proposed regulation text. The rationale for the Commissioner's determination that each revision is reasonably necessary to carry out the purpose for which it is proposed is also set forth below.

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF THE REGULATIONS

On November 27, 2006, the Commissioner noticed and made available for public comment certain changes to the regulation text as initially proposed. Additional changes were noticed and made available for public comment on May 9, 2007 and May 31, 2007. The Commissioner received a number of comments following each of the notices described above, and the summaries and responses to those comments are reflected within this Final Statement of Reasons. The changes to the regulation text were sufficiently related to the rulemaking action as originally noticed such that a reasonable member of the directly affected public could have determined from the original notice that these changes could have resulted. (Cal.Code Regs., tit. 1, §42.)

In addition to the changes that were made available for public consideration, the Commissioner has made changes which are either solely grammatical in nature, or which clarify without materially altering the requirements, rights, responsibilities, conditions or prescriptions contained in the original text. In accordance with Government Code section 11346.8(c) and California Code of Regulations, title 1, section 40, these changes were not presented to the public for consideration due to the nonsubstantial nature of the change.

With the exception of the grammatical and nonsubstantial changes, each of the changes referenced above are described below in the same order as those changes appear in the regulation under the heading “Sufficiently Related Changes.” The nonsubstantial changes, which were not provided to the public for review, are identified and explained under the separate heading: “Nonsubstantial Changes.” Grammatical changes, the purpose of which will be readily apparent within the body of the regulation itself, have not been separately identified.

SUFFICIENTLY-RELATED CHANGES

Citations to Authority and Reference:

The Commissioner has clarified, refined and tailored the authority and reference citations for each of the regulation sections. These refinements and revisions were intended to clearly identify for each specific section of the regulations the particular statutes that the Commissioner is implementing, interpreting or making specific by adopting these regulations. The refinements also identify for each specific section of the regulations the particular statutes that obligate or permit the Commissioner to adopt the regulations. The changes were reasonably necessary to ensure that the authority and reference citations were tailored to the characteristics of each particular regulation section.

As an example of the refinements, the Commissioner has removed Insurance Code sections 12401.7 – 12401.9 from many of the regulation reference citations for particular regulation sections because those Insurance Code provisions serve a limited purpose which was only tangentially related to those particular regulation sections.

Similarly, throughout the regulations, the Commissioner’s earlier version of the regulations included a citation to Insurance Code section “12401.21.” This citation was misprinted throughout the regulations, and has been replaced with the correct citation: Insurance Code section 12414.21.

The following references were also added:

- Civil Code Section 1351: reference for Section 2355.3
- Government Code Section 6253: reference for Section 2355.8
- Code of Civil Procedure Section 2015.5: reference for Section 2356.5
- Revenue and Taxation Code Section 12202: reference for Section 2357.14
- Insurance Code Sections 12414.14, 12414.15 and 12414.16: references for Section 2359.2.
- Insurance Code Sections 12414.13 -12414.18: references for to Section 2359.6.

With the exception of the Revenue and Taxation Code Section, each these references are cited within the body of the sections. The Revenue and Taxation Code section was added to a section dealing with premium tax rate.

Clarity of Formula Display:

The Commissioner enhanced the font and typeface for the formulae printed throughout the regulations. The changes to the font and typeface were reasonably necessary in order to ensure that the regulations would be legible when printed in the California Code of Regulations.

Section 2355.3 Definitions.

Subsection (l): The definition of “full escrow” was revised to clarify that the definition represents the minimal activities which must be performed in order to meet the definition. This change was reasonably necessary in order to provide further clarity to the definition.

Subsection (p) through (r) and subsection (w): Definitions were added to identify the meaning of “non-purchase other than refinancing transaction,” “non purchase refinancing transaction” “non-purchase transaction” and “purchase transaction.” These definitions are reasonably necessary to identify the different interim rate reduction percentages which pertain to each type of transaction.

Subsection (y): In response to public comment, the interim rate reductions for escrow have been revised for escrow transactions, and now are broken into different rate reductions for different regions of the state. As part of this revision, the regulations now separate California into three regions, for purposes of the escrow interim rate reduction. Those regions are: 1) the South, 2) the Bay Area and 3) the Rest of the State. This revision was reasonably necessary in order to respond to the public comments that have identified the different composition of rates for Northern and Southern California escrow.

Subsection (cc): This provision defines “Title insurance company,” as that term is used within the regulations. Because title insurers, underwritten title companies and controlled escrow companies often divide responsibility for services performed, this revision was reasonably necessary to reflect that the definition of title insurance company functions in accordance with the division of labor used by different companies.

Section 2355.4. Projection factors.

Subsection (o): This provision was revised to clarify that the forecasted new home median value means the median value of new home sales in California as reported by the California Department of Finance.

Subsection (s): This provision changes the definition of “ReportMedValue” to “ForecastMedValue.” This change is reasonably necessary to more clearly identify for the reader that this value is a forecast, rather than simply a “report”.

Sections 2356.4, 2356.8 and 2356.9. Use of the word “should.”

Prior versions of the regulations, as proposed, provided instructions to title insurers, underwritten title companies and controlled escrow companies concerning the reporting requirements for complying with the statistical plan. These instructions were often couched in terms of what those regulated entities “should” do to comply with the regulations. While the

Commissioner has always intended for regulated entities to read these instructions as mandatory, in order to avoid any misinterpretation of the Commissioner's intent, the use of the word "should" has been replaced with the word "shall" throughout Subarticle 2.

Section 2356.4. When to Report.

Subsection (a): This provision was revised to reflect that the submission of experience reports shall be on an annual basis. Additionally, in response to public comment, the regulations were revised to change the deadline for the initial submission of experience reports from April 30, 2008 to April 30, 2010 for the reporting of 2009 experience, rather than the previously proposed 2007 experience period. These changes were reasonably necessary in order to accommodate the concerns of licensees that felt the proposed regulations did not provide them with enough time to collect the relevant experience records.

Subsection (b): Similar changes to the deadline for submissions were made to the second annual submission and those submissions that follow. These changes were reasonably necessary in order to accommodate the concerns of licensees that felt the proposed regulations did not provide them with enough time to collect the relevant experience records.

Subsection (c): This provision was added to the regulations in order to provide reporting licensees and the statistical agent with the ability to perform a "trial run" of the statistical plan. Thus, by June 30 of 2009, experience reports will be submitted concerning licensees' experience from January through March of 2009. This is reasonably necessary in order to assist the Commissioner as well as the licensees as they prepare for the official April 30, 2010 statistical plan submission.

Subsection (d): The regulations now include a procedure for relief from the statistical plan reporting requirements for underwritten title companies and controlled escrow companies that have revenues less than \$10 million in the preceding calendar year and less than 10% common ownership or control until such time as commercial products and services become available that would enable the companies to meet the requirements of the statistical plan in an economical manner. This change is reasonably necessary to respond to the public's concern about the ability of smaller companies to have the resources necessary to report the data required by the statistical plan.

Section 2356.5. How to Report.

Subsection (h): This provision was revised to ensure consistency with the revised deadline for the initial submission of experience reports from April 30, 2008 to April 30, 2010 for the reporting of 2009 experience, rather than the previously proposed 2007 experience period. The previous examples described how to report data using dates in 2006 and 2007. These changes were reasonably necessary in order to preserve the clarity of the regulations by ensuring the examples in the regulations were consistent with the due dates for the initial data reporting.

Section 2356.8. Title Insurer Statistical Plan Reports.

Subsection (a)(2): The reporting explanations were modified by deleting two words and adding a new sentence. These revisions are reasonably necessary to clarify the reporting of work charges / premium splits.

Subsections (a)(2), TI01.AA through TI02.AJ: The reporting of these data elements was eliminated to ease reporting requirements for reporting companies.

Subsection (b)(9), TI02.B: The description and instructions for this data element were modified to reference a specific table. These revisions are reasonably necessary to clarify reporting requirements.

Subsection (b)(7): This provision was revised to ensure consistency with the revised deadline for the initial submission of experience reports from April 30, 2008 to April 30, 2010 for the reporting of 2009 experience, rather than the previously proposed 2007 experience period. The previous examples described how to report data using dates in 2006 and 2007. These changes were reasonably necessary in order to preserve the clarity of the regulations by ensuring the examples in the regulations were consistent with the due dates for the initial data reporting.

Subsection (b)(11), TI02.AB: The description and instructions for this data element were modified to reference a specific table. These revisions are reasonably necessary to clarify reporting requirements.

Subsection (c)(6): This provision was revised to ensure consistency with the revised deadline for the initial submission of experience reports from April 30, 2008 to April 30, 2010 for the reporting of 2009 experience, rather than the previously proposed 2007 experience period. The previous examples described how to report data using dates in 2006 and 2007. These changes were reasonably necessary in order to preserve the clarity of the regulations by ensuring the examples in the regulations were consistent with the due dates for the initial data reporting. Revisions were also made to this provision to clarify that the data reported will be revenue and expenses on a calendar year basis, rather than assets and liabilities.

Subsection (c)(10), TI03.B: The description and instructions for this data element were modified to reference a specific table. These revisions are reasonably necessary to clarify reporting requirements.

Subsection (c)(11), TI03.01 through 03.87: A new line item was added to Table TI03 for changes in title loss reserves. This addition caused the change in line numbers and internal references for most of the other line items. The entire table was replaced. This change is necessary to correct Table TI03 and clarify reporting requirements.

Subsection (c)(12), TI03.AB: The description and instructions for this data element were modified to reference a specific table. These revisions are reasonably necessary to clarify reporting requirements.

Subsection (g)(4), TI07.I: An additional data element was added to the table regarding the nature of an affiliate transaction. This change is necessary to provide information to interpret the other data reported in the table.

Subsection (l)(3), TI12.01 through TI12.28: Several additional data elements were added to the table and line numbering was changed, resulting in a replacement table. The change was necessary to conform Table TI12 to the references to Table TI12 in Sections 2357.7 and 2357.8. TI12.01 was also revised to correct the reporting year dates set forth in the example. These changes were reasonably necessary in order to preserve the clarity of the regulations by ensuring the examples in the regulations were consistent with the revised due dates for the data reporting.

Subsection (o), TI15.C: The regulations were revised to correct the reporting year date set forth in this example. This change was necessary in order to preserve the clarity of the regulations by ensuring the examples in the regulations were consistent with the revised due dates for the data reporting. TI15.I was revised to notify affected entities that the Commissioner has incorporated the ALTA Claims Codes by reference within these regulations. This change was necessary because the Commissioner's statistical plan regulations use the ALTA Claims Codes as the uniform method by which regulated entities must report claim type.

Subsection (p)(3), TI16.A through TI16.V: The regulations were revised to correct the reporting year dates set forth in this example. These changes were necessary in order to preserve the clarity of the regulations by ensuring the examples in the regulations were consistent with the revised due dates for the data reporting.

Subsection (q), TI17.F: The regulations were revised to correct the reporting year date set forth in this example. This change was necessary in order to preserve the clarity of the regulations by ensuring the example in the regulations was consistent with the revised due dates for the data reporting.

Section 2356.9. Annual Financial Data Requirements for Underwritten Title Company Reports.

Subsection (a): The reporting explanations were modified by deleting two words and adding a new sentence. These revisions are reasonably necessary to clarify the reporting of work charges / premium splits.

Subsection (a), UTC01.AA through UTC01.AJ: The reporting of these data elements was eliminated to ease reporting requirements for reporting companies.

Subsection (b)(7): The regulations were revised to correct the reporting year date set forth in this example. This change was necessary in order to preserve the clarity of the regulations by ensuring the example in the regulations was consistent with the revised due dates for the data reporting.

Subsection (b)(9), UTC02.B: The description and instructions for this data element were modified to reference a specific table. These revisions are reasonably necessary to clarify reporting requirements.

Subsection (b)(11), UTC02.AB: The description and instructions for this data element were modified to reference a specific table. These revisions are reasonably necessary to clarify reporting requirements.

Subsection (c)(6): This provision was revised to ensure consistency with the revised deadline for the initial submission of experience reports from April 30, 2008 to April 30, 2010 for the reporting of 2009 experience, rather than the previously proposed 2007 experience period. The previous examples described how to report data using dates in 2006 and 2007. These changes were reasonably necessary in order to preserve the clarity of the regulations by ensuring the examples in the regulations were consistent with the due dates for the initial data reporting. Revisions were also made to this provision to clarify that the data reported will be in the form of revenue and expenses on a calendar year basis, rather than assets and liabilities.

Subsection (c)(10), UTC03.B: The description and instructions for this data element were modified to reference a specific table. These revisions are reasonably necessary to clarify reporting requirements.

Subsection (c)(11), UTC03.01 through UTC03.87: A new line item was added to Table UTC03 for changes in title loss reserves. This addition caused the change in line numbers and internal references for most of the other line items. The entire table was replaced. This change is necessary to correct Table UTC03 and clarify reporting requirements.

Subsection (c)(12), UTC03.AB: The description and instructions for this data element were modified to reference a specific table. These revisions are reasonably necessary to clarify reporting requirements.

Subsection (g)(4), UTC07.I: An additional data element was added to the table regarding the nature of an affiliate transaction. This change is necessary to provide information to interpret the other data reported in the table.

Subsection (l), UTC 12.01 through UTC 12.28: Several additional data elements were added to the table and line numbering was changed, resulting in a replacement table. The change was necessary to conform Table UTC12 to the references to Table UTC12 in Sections 2357.7 and 2357.8. UTC 12.01 was also revised to correct the reporting year dates set forth in this example. These changes were necessary in order to preserve the clarity of the regulations by ensuring the examples in the regulations were consistent with the revised due dates for the data reporting.

Section 2357.2. Excessive charges.

Subsection (a): The reference to section 2357.5 was revised in order to correct an erroneous reference to section 2357.6. This change is reasonably necessary in order to preserve the clarity of the regulations.

Subsections (b) and (c): These provisions were revised in order to clarify that the fee imposed by licensees for a preliminary report cannot exceed the preliminary report charge, as set forth in section 2357.7. This revision is intended to notify affected licensees that, in addition to the other prohibitions concerning excessive rates, the preliminary report charge is subject to its

own, specific formulaic maximum. This change is reasonably necessary in order to notify affected licensees that the final charge for title insurance cannot exceed either the maximum title insurance charge or the preliminary report charge.

Section 2357.3. Determination of title insurance totals.

Subsection (k): This section was revised to notify affected licensees and the statistical agent that the total underwritten title company title insurance sum for Line TI03.02 of the statistical plan includes not only that portion of premium either retained by the underwritten title company but also any premium remitted to the underwritten title company. This change is reasonably necessary to clarify the information referred to in subsection (k).

Subsection (p): Revisions were made to this section to provide the correct references to the statistical plan for the Owner's Policy Amount of Premium (TI14.M) and the Lender's Policy 1 Amount of Premium (TI14.P). These revisions were reasonably necessary to provide clear references to affected licensees and in order to aid the statistical agent in reviewing the title insurance totals, as they are calculated in accordance with the statistical plan.

Subsections (v)(1)(A) and (v)(1)(B): Revisions were made to this portion of the regulations in order to provide a more complete description to the reader that TI03.32, UTC03.32 and TI04.02 reflect Title Plant Maintenance "for Owned Title Plants." Additionally, in subsection (v)(1)(A)(iv), the reference to the reporting line for "Total Personnel Cost" was corrected. These revisions were reasonably necessary in order to provide additional clarity to the public regarding the function and correct citation for these references within the statistical plan.

Subsection (x)(1)(A)(i) and (ii): The revision to subsection (x)(1)(A)(i) was reasonably necessary in order to provide the public with a complete description of the name for data line TI03.52. The revision to subsection (x)(1)(A)(ii) was reasonably necessary to correct an erroneous citation reference to the data line for Facility Rent, Depreciation and Amortization.

Subsection (y)(A)(i) and (iii): These revisions to (i) and (iii) provide corrected citation references to the data lines for title insurers "Subscription Fees, Rent and Charges for Non-Owned Title Plants" and for underwritten title companies "Subscription Fees, Rent and Charges for Non-Owned Title Plants," respectively. These revisions were reasonably necessary in order to provide greater clarity to the regulations.

Subsection (z)(1)(A)(i) through (iv) and (z)(1)(B)(i) through (ii): Revisions were made to correct an erroneous citation references for data lines TI03.35 "Preliminary Report Production and Issuance," data line TI04.03 "Preliminary Report Issuance," data line UTC03.35 "Preliminary Report Production and Issuance," and data line UTC04.03 "Preliminary Report Issuance." These revisions were reasonably necessary in order to provide greater clarity to the regulations.

Subsection (ai)(2): The word "Row" was inserted in place of the word "Line" in order to provide a more accurate description of the data lines that are required to be added together for purposes of subsection (ai)(2). This revision was reasonably necessary in order to provide greater clarity to the regulations.

Subsection (aj): The word “ClassRel_{avg}” was inserted to provide consistency and greater clarity with the use of that term within the maximum title insurance charge formula set forth in section 2357.5.

Subsection (aj)(1)(A) through (D) and (aj)(2)(A): References were corrected and relevant data lines were added in order to provide the correct citation to those references for the following data lines: Report TI14, Column TI14.N “Owner’s Policy Basic Premium,” TI14.Q “Lender’s 1 Policy Basic Premium,” TI14.T “Lender’s Policy 2 Basic Premium,” Report TI14, Column TI14.AD “Total Premium for Title Insurance Policies.” These revisions were reasonably necessary in order to provide greater clarity to the regulations.

Subsection (ak) and (al): The references to column TI03.D “California Current Year Total” were corrected in order to provide greater clarity to the regulations.

Section 2357.4. Determination of projected values for title insurance.

Subsections (a),(b),(e)(2), (f)(2), (g)(3), (h)(2) and (l)(3): The word “factor” was added to “market value growth factor” in order to provide the public with a complete description of the factor used for application in these sections of the regulations. This change was reasonably necessary in order to clarify for the reader the identity of the factor to be used in the calculations for the various projection values identified in those subsections.

Section 2357.5. Maximum title insurance charge for a policy.

Subsection (a)(2): The word “policy” was added to “average title policy class relativity” in order to provide the public with a complete description of the factor used for application in this section of the regulations. This change was reasonably necessary in order to clarify for the reader the identity of the factor to be used in the calculations for the projection value identified in subsection (a)(2).

Subsection (b): The description of “concurrent policy” was revised to reflect the fact that there may be more than one concurrent policy issued as part of a particular transaction. This revision was reasonably necessary to clarify for the reader that the regulations recognize the possibility that multiple concurrent policies may be necessary in a given transaction.

Section 2357.9. Maximum rate of return.

Subsection (b): This revision was made in response to those public comments that suggested that the maximum rate of return was not sufficient. The allowance of a 6 percent return, rather than 3¾ percent, when added to the average return on short, medium and long-term U.S. Treasury bonds for the most recent three months will ensure a rate of return that is commensurate with the maximum rate of return permitted for other lines of insurance regulated by the Commissioner. This revision was reasonably necessary to avoid any question that firms subject to the regulation have been afforded the opportunity to earn a fair return in their regulated business.

Section 2357.13. Policy charge.

The title to section 2357.13 was changed from “Maximum Policy Charge” to “Policy Charge.” While the language of section 2357.13 defines the formula for the calculation entitled “Policy Charge,” the word “Maximum” is not found within the regulation. The Commissioner, therefore, deleted the word “Maximum” from the title of the regulation section. This change was reasonably necessary to make the title of the section consistent with the use of the term within the regulation section.

Section 2357.15. Premium tax rate.

The acronym “PTR” was deleted, as it is no longer used elsewhere in the regulations. This change is reasonably necessary to provide added clarity to the regulations.

Section 2357.19. Interim maximum title insurance rates.

Subsection (a) through (e): The Commissioner has taken into consideration the public comments, as well as new data, to create an improved set of calculations for the interim maximum title insurance rate. As a result of the public rulemaking process, many significant changes from the previous version of the proposed regulations can be found in the final regulations. Each of these changes is described in greater detail below.

Subsection (a)

In subsection (a) of the proposed regulations, taking into account the concerns expressed by the title industry regarding the amount of time it will take to revise industry cost structures to those levels required by a competitive market, the Commissioner has amended the regulations so that the interim rate reductions will not take effect until October 1, 2010. Similar changes were made to subsections (b) through (e), to ensure consistency with this effective date. As a result of the improved set of calculations, which employ historical data through September 2006, the regulations now divide the interim rate reduction into three separate transaction types.

The new transaction types are divided into 1) property purchases (referred to as “Title Purchase”), 2) refinance transactions (referred to as “Title Non-Purchase Refinance”) and 3) other transactions such as home equity loans (referred to as “Title Non-Purchase Other-Than Refinance”). The interim rate reduction for each of these transactions has been narrowly tailored to address the extent to which housing inflation since 2000 has increased the charge for the particular transaction well beyond the price that would exist in a competitive market. Thus, after adjusting for inflation and similar justifiable increases in the charge, regulated entities must reduce the rates they would have charged for the same policy based on rates in effect for the title insurance company on December 31, 2000. For Title Purchase transactions, the interim rate reduction must be 25.6% or greater, based on rates in effect on December 31, 2000. For Title Non-Purchase Refinance transactions, the interim rate reduction must be 9.8% or greater, based on rates in effect on December 31, 2000. For Title Non-Purchase Other-Than Refinance transactions, the interim rate reduction must be 15.4% or greater, based on rates in effect on December 31, 2000.

These changes are reasonably necessary to respond to the concerns of the public regarding the differences in rates for different kinds of transactions, as well as the public's concern about the need for a longer period of transition between the existing market and the market which will exist after the Commissioner's regulatory formulae take effect.

Subsection (b)

Many comments concerning the regulations included the contention that the interim rate reductions were not responsive to potential home price deflation. In order to meet this concern, the Commissioner has revised the regulations to expressly provide for an annual adjustment of the rate reduction percentages in the event that the average-transaction amounts for a particular transaction type should fall below 2006 levels.

Thus, in subsection (b) a sales price adjustment factor is established in order to make appropriate adjustments, in the event that changes in the median home sales price and changes in transaction size require adjustment to the interim rate. If, for example, median home values for a particular transaction type fall by 50%, assuming there were no consumer price index inflation, the interim-rate reduction would lower the rate reduction by the same 50%. Thus, a Title Purchase in 2008 would result in a reduction in title premiums to 12.8% (25.6% divided by 2) if there were a 50% fall in housing prices between now and 2008.

These changes are reasonably necessary in order to respond to the concerns expressed by some industry representatives about a potential economic downturn in the real estate market.

Subsection (c)

This subsection extends by over two years the date by which title insurers must reduce their rates in accordance with the interim rate reduction formula. As is explained above, this extension is intended to address the concerns of those title insurers that may need additional time to adjust their current cost structures to bring rates into conformity with these regulations. Additionally, many commenters have stated that some title insurers have already voluntarily reduced their rates for particular kinds of transactions, such as refinance transactions. In response to comments such as these, the proposed regulations expressly state the Commissioner's original intention to allow title insurers to receive credit for any relevant rate reductions voluntarily filed on or after January 1, 2001. This revision is reasonably necessary to respond to the concerns of some title insurers that believed their relevant voluntary reductions in rates between 2001 and 2006 would not be entitled to any credit under the interim rate reduction formula.

Subsection (d)

This subsection notifies the public that rates for every policy form, endorsement or other title service are subject to the interim rate reductions required by this section. This provision is reasonably necessary to avoid any misconception about whether endorsements or other title services would be subject to the regulations. To the extent that any charge made to the public is a "service[]...perform[ed] in transacting the business of title insurance," such charge is a rate within the meaning of Insurance Code section 12340.7 and is therefore subject to the interim rate reduction formula.

Subsection (e)

The schedule for implementation of the interim rate reduction formulae has been linked to the implementation schedule for the permanent maximum rate regulatory formulae for title insurance rates, as set forth in sections 2357.1 through 2357.18. The effect of this change is to implement the interim-rate reduction formulae only in the event that data from the statistical plan are not available to publish the values necessary for implementation of the permanent maximum rate formula. Thus, stated another way, if the Commissioner is able to publish the values set forth in section 2357.4 and all of the totals specified in section 2357.3 on or before July 30, 2010, then the permanent maximum rate formula will take effect and the interim rate regulations will not become operative.

These revisions to the regulations are reasonably necessary to ensure that some form of consumer protection will take effect by July 30 of 2010. Whether the interim rate reductions will be necessary will depend, in large part, upon the extent to which title and escrow companies provide the relevant data for effective implementation of the statistical plan.

Section 2358.2. Determination of escrow totals.

Subsection (k): This section was revised reflect the correct data field name for data line TI03.12, "Title Premium Retained or Remitted to Underwritten Title Companies." This change is reasonably necessary to clarify the information referred to in subsection (k).

Subsection (t)(1)(A)(i), (ii) and (t)(1)(A)(i), (ii): These sections were revised reflect the correct data field name for data lines TI03.52 and UTC03.52. Additionally, in subsection (t)(1)(A)(ii), a correction was made to reflect the correct citation to data line UTC03.52. These changes were reasonably necessary to correct an erroneous citation reference and provide the correct data field names for the data lines for Facility Rent, Depreciation and Amortization in the sections referenced above.

Subsection (v)(1)(B)(ii): This section was revised to reflect the correct data line reference for UTC07.D. The letters "TI" were erroneously attached to the reference and were deleted. This change is reasonably necessary to clarify the information referred to within this subsection.

Subsection (w)(1)(B)(ii): This section was revised to reflect the correct citation reference for data lineUTC04.16, "Funds Transfer." This change is reasonably necessary to clarify the information referred to within this subsection.

Subsection (x)(1)(B)(ii): This section was revised to reflect the correct citation reference for data lineUTC04.16, "Funds Transfer." This change is reasonably necessary to clarify the information referred to within this subsection.

Subsection (y)(1)(A)(ii): This section was revised to reflect the correct citation reference for data column TI04.M, "Total Personnel Costs." This change is reasonably necessary to clarify the information referred to within this subsection.

Subsection (y)(1)(A)(iv): This section was revised to reflect the correct citation references for data line UTC04.14, "Courier and Delivery – Escrow" and column UTC04.M,

“Total Personnel Costs.” These changes were reasonably necessary to clarify the information referred to within this subsection.

Subsection (y)(1)(B)(ii): This section was revised to reflect the correct data line reference for UTC07.D. The letters “TI” were erroneously attached to the reference and were deleted. This change is reasonably necessary to clarify the information referred to within this subsection.

Subsection (z)(1)(A)(ii) and (iv): These sections were revised to reflect the correct data field name for data lines TI04.10, “Escrow Claims Settlement” and UTC04.10, “Escrow Claims Settlement.” These changes were reasonably necessary to clarify the information referred to within these subsections.

Subsection (z)(1)(B)(i): This section was revised to reflect the correct data field name and citation for data line TI04.04, “Escrow Claims Settlement.” This change is reasonably necessary to clarify the information referred to within this subsection.

Subsection (z)(1)(B)(ii): This section was revised to reflect the correct data field name and citation for data line UTC03.31, “Total Escrow Loss and Loss Settlement Expense” and the correct citation for data line UTC04.04, “Escrow Claims.” These changes were reasonably necessary to clarify the information referred to within these subsections.

Subsection (ab)(2)(A) and (B): These sections were revised to reflect the correct data field citation for data lines TI12.12, “Net Income Before Taxes” and UTC12.12, “Net Income Before Taxes.” These changes were reasonably necessary to clarify the information referred to within these subsections.

Subsection (ag)(2)(B): This section was revised to reflect the correct data field citation for column UTC05.L, “Total Escrow Charge.” This change is reasonably necessary to clarify the information referred to within this subsection.

Section 2358.3. Determination of projected values for escrow.

Subsections (a) through (c): In subsections (a) and (b), the word “rate” was deleted and replaced with “factor” in “transactions growth factor” in order to provide the public with a complete description of the factor used for application in these sections of the regulations. In subsection (c), the word “rate” was deleted and replaced with “factor” in “market value growth factor” for a similar purpose. These changes were reasonably necessary in order to clarify for the reader the identity of the factor to be used in the calculations for the various projection values identified in those subsections.

Section 2358.8. Interest-bearing escrow accounts.

This provision was amended in order to take into consideration the concerns expressed in the comments of the Attorney General. In particular, rather than set a \$25 maximum for an interest bearing account fee, the Commissioner has revised this section in order to prevent any suggestion that the Commissioner condones a charge that is as high as \$25 for an interest bearing account. Instead, the regulations have been revised in order to clarify that any interest-bearing

escrow account fee collected by an entity transacting the business of title insurance must be filed with the Commissioner.

This provision has also been revised to notify all affected licensees that any fees which are charged through an interest-bearing escrow account must comply with all relevant provisions of law, and nothing contained within these regulations should be interpreted to reduce or supersede any rights that a consumer may have concerning the improper assessment of an interest-bearing account charge or similar fee.

These changes are reasonably necessary in order to prevent a licensee from using this section as a means to avoid liability for an improper or unlawful fee.

Section 2358.9. Interim maximum rates for escrow.

This section has been revised in order to clarify for the reader that section 2358.9 represents the interim-maximum rate formula “for escrow.” This change represents a reasonably necessary clarification to the existing regulation text.

Subsection (a) through (e): The Commissioner has taken into consideration the public comments, as well as new data, to create an improved set of calculations for the interim maximum rate for escrow. As a result of the public rulemaking process, many significant changes from the previous version of the proposed regulations can be found in the final regulations. Each of these changes is described in greater detail below.

Subsection (a)

In subsection (a) of the proposed regulations, taking into account the concerns expressed by the escrow industry regarding the amount of time it will take to revise industry cost structures to those levels required by a competitive market, the Commissioner has amended the regulations so that the interim rate reductions will not take effect until October 1, 2009. As a result of the improved set of calculations, which employ historical data through September 2006, the regulations now divide the interim rate reduction into two separate transaction types.

The new transaction types are divided into 1) property purchases (referred to as “Escrow Purchase”) and 2) refinancing transactions and other property transactions that do not involve a new purchase (referred to as “Escrow Non-Purchase”). The interim rate reduction for each of these transactions has been narrowly tailored to address the extent to which housing inflation since 2000 has increased the charge for the particular transaction well beyond the price that would exist in a competitive market. Thus, after adjusting for inflation and similar justifiable increases in the charge, regulated escrow companies must reduce the rates they would have charged for the same policy based on rates in effect for the escrow company on December 31, 2000.

These changes are reasonably necessary to respond to the concerns of the public regarding the differences in rates for different kinds of transactions, as well as the public’s concern about the need for a longer period of transition between the existing market and the market which will exist after the Commissioner’s regulatory formulae take effect.

Subsection (b)

Similarly, in response to public comment, the maximum escrow charge applicable for a particular escrow company will depend upon the region of the State in which the company conducts its business. In order to recognize the regional differences in cost for the escrow product, the revised regulations apply different escrow rate reductions to three different regions of the State: 1) the Bay Area, 2) the South, and 3) the Rest of the State.

In addition, many comments concerning the regulations expressed a concern that the interim rate reductions were not responsive to potential home price deflation. In order to meet this concern, the Commissioner has revised the regulations to expressly provide for an annual adjustment of the rate reduction percentages in the event that the average-transaction amounts for a particular transaction type should fall below 2006 levels.

Thus, in subsection (b) a sales price adjustment factor is established in order to make appropriate adjustments, in the event that changes in the median home sales price and changes in transaction size require adjustment to the interim rate. If, for example, median home values for a particular transaction type in Southern California fall by 50%, assuming there were no consumer price index inflation, the interim-rate reduction would lower the rate reduction by the same 50%. Thus, a 2008 Escrow Purchase transaction in the region of the State designated as “South” would result in a smaller escrow charge reduction of 11.5% (23% divided by 2) if there were a 50% fall in housing prices between now and 2008.

These changes are reasonably necessary in order to respond to the concerns expressed by some industry representatives about a potential economic downturn in the real estate market.

Subsection (c)

This subsection extends by over two years the date by which controlled escrow companies must reduce their rates in accordance with the interim rate reduction formula. As is explained above, this extension is intended to address the concerns of those controlled escrow companies that may need additional time to adjust their current cost structures to bring rates into conformity with these regulations. Additionally, many commenters have stated that some controlled escrow companies have already voluntarily reduced their rates for particular kinds of transactions, such as refinance transactions. In response to comments such as these, the proposed regulations expressly state the Commissioner’s original intention to allow controlled escrow companies to receive credit for any relevant rate reductions voluntarily filed on or after January 1, 2001. This revision is reasonably necessary to respond to the concerns of some controlled escrow companies that believed their relevant voluntary reductions in rates between 2001 and 2006 would not be entitled to any credit under the interim rate reduction formula.

Subsection (d)

This subsection notifies the public that rates for every service performed by a controlled escrow company is subject to the interim rate reductions required by this section. This provision is reasonably necessary to avoid any misconception about whether particular escrow services would be subject to the regulations. To the extent that any charge made to the public is a “service[]...perform[ed] in transacting the business of title insurance,” such charge is a “rate”

within the meaning of Insurance Code section 12340.7 and is therefore subject to the interim rate reduction formula.

Subsection (e)

The schedule for implementation of the interim rate reduction formulae has been linked to the implementation schedule for the permanent maximum rate regulatory formulae for escrow charges, as set forth in sections 2358.1 through 2358.7. The effect of this change is to implement the interim-rate reduction formulae only in the event that data from the statistical plan are not available to publish the values necessary for implementation of the permanent maximum rate formula. Thus, stated another way, if the Commissioner is able to publish the values set forth in section 2358.3 and all of the totals specified in section 2358.2 on or before July 30, 2010, then the permanent maximum rate formula will take effect and the interim rate regulations will not become operative.

These revisions to the regulations are reasonably necessary to ensure that some form of consumer protection will take effect by August of 2010. Whether the interim rate reductions will be necessary will depend, in large part, upon the extent to which title and escrow companies provide the relevant data for effective implementation of the statistical plan.

NONSUBSTANTIAL CHANGES

The following changes were made to the regulation text without notice and an opportunity to comment. Each of the changes below represents a minor correction to a typographical error. Each change clarifies the text without materially altering the requirements, rights, responsibilities, conditions or prescriptions contained in the original text. (1 Cal. Code. Regs., § 40.)

- Section 2356.3(c)(3) corrected: "December 31, 2207" corrected to read "December 31, 2007"
- Section 2358.2(z)(1)(B)(i): "TI04.04" corrected to read "TI04.10"
- Section 2358.2(z)(1)(B)(ii): "UTC04.04 (Escrow Claims)" corrected to read "UTC04.10 (Escrow Claims Settlement)"
- Section 2356.8(c)(11), row TI03.27: "TI03.23" corrected to read "TI03.22"
- Section 2356.8(d)(1), "company's experience" corrected to read "company's experience"
- Section 2356.9(a) paragraphs two and three numbered as subsections (1) and (2)
- Section 2356.9(c)(11), row TI03.01: "report premium only for transaction in which . . ." corrected to read "report premium only for transactions in which . . ."
- Section 2356.9(c)(11), row UTC03.27: "UTC03.23" corrected to read "UTC03.22"

- Section 2358.1: “[t]he provisions of this article . . . “ corrected to read “[t]he provisions of this subarticle . . .”

UPDATE TO MATERIAL RELIED UPON

The Commissioner relied upon various reports and studies prepared by his staff as well as materials prepared by other entities. In addition to the documents already identified in the Initial Statement of Reasons, the Commissioner relied upon the following materials:

1. Swiss Re Sigma No. 3/2005, “Insurers’ Cost of Capital and Economic Value Creation: Principles and Practical Implications” (May 2005).

This material is included in the rulemaking file as support for the calculation of section 2357.9, Maximum Rate of Return.

2. Staff Report, “2005 Title Insurance 5-Years Profitability Report” (June 2006).

This material is included in the rulemaking file as support for the provisions of section 2357.9, Maximum Rate of Return.

3. Staff Report, “Calculation of Profit Factor” (November 27, 2006).

This material is included in the rulemaking file as support for section 2357.8, Profit Factor and section 2357.9, Maximum Rate of Return.

4. Staff Report, “Calculation of Sales Cost Factor” (November 27, 2006).

This material is included in the rulemaking file as support for section 2357.12, Sales Cost Factor.

5. Staff Report, “Interim Rate Reduction” (November 2006).

This material is included in the rulemaking file as support for section 2357.19, Interim Maximum Title Insurance Rates, and section 2358.9, Interim Maximum Rates for Escrow.

6. Washington State Office of the Insurance Commissioner, “An Investigation into the Use of Incentives and Inducements by Title Insurance Companies” (October 2006).

This material is included in the rulemaking file as support for the proposed regulations' finding that a reasonable degree of competition is absent from the California market, in part, because reverse-competition is endemic to the title industry. It represents a more recent confirmation of findings by other studies, such as those conducted by Peat Marwick in 1980 and the Department of Justice in 1977, which at least one industry commenter contended were outdated.

7. American Land Title Association, “ALTA Claims Codes” (2002).

The ALTA Claims Codes are incorporated by reference within the regulations. The Claims Codes are included within the rulemaking file in order to provide reporting entities with a uniform method for reporting types of claims in accordance with the statistical plan instructions set forth in section 2356.8(n), data field TI15.I.

DOCUMENT INCORPORATED BY REFERENCE
(Cal. Code Regs., tit. 1, § 20(c).)

The Commissioner’s regulations require, among other things, that entities “transacting the business of title insurance” within the meaning of Insurance Code section 12340.3 shall provide to the Commissioner a detailed report of claims information. The regulations also require information regarding the various types of claims reported.

In order to provide a uniform and consistent method for the reporting of claim types, the Commissioner has incorporated by reference the ALTA Claims Codes (2002). The ALTA Claims Codes contains over 80 codes. Given the number of codes and the size of the regulations themselves, the Commissioner has determined that it would be both impractical as well as cumbersome to publish the codes in the California Code of Regulations.

In section 2356.8(o), therefore, the Commissioner has incorporated the ALTA Claims Codes by reference. On May 9, 2007, pursuant to Government Code section 11346.8(c), the Commissioner notified the public of his reliance upon the ALTA Claims Codes and their incorporation by reference within the regulations. The ALTA Claims Codes were reasonably available to the affected public from a number of commonly known sources. The Government Code section 11346.8(c) notice that the Commissioner sent to the public indicated that the ALTA Claims Codes are available for viewing on the Department’s website, as well as upon request by a member of the public. The ALTA Claims Codes were and are also available on the website of the American Land Title Association at www.alta.org.

The NAIC Company Codes and California UTC Codes are not materials incorporated by reference in these regulations. These codes are unique company identifiers that are known to the companies; therefore, incorporation by reference is unnecessary.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Commissioner has made a determination that adoption, amendment or repeal of the regulations does not impose a mandate on local agencies or school districts.

NECESSITY

The Commissioner has made a determination that it is necessary for the health, safety or welfare of the people of the state that these regulations apply to businesses. The public was notified of this determination in the Commissioner’s Notice of Availability of Changed Text and Notice of Additional Document Relied Upon, issued on May 9, 2007.

ALTERNATIVES

While many comments submitted during the rulemaking resulted in revisions to these regulations, no alternatives to the regulation (including alternatives to lessen any adverse economic impact on small business), other than those reflected in the comments submitted during this rulemaking proceeding, were presented to or considered by the Commissioner.

After a review of the alternatives presented, the Commissioner has determined that no alternative would be more effective in carrying out the purpose for which the regulations are proposed, or would be as effective and less burdensome to affected private persons or small businesses than the proposed regulations.

SUMMARY AND RESPONSE TO COMMENTS

The summary and response to comments are organized and bound directly after this page.